

**Lisa McGuire**  
**BZA Application**  
**2825 11<sup>th</sup> Street N.W. (Sq. 2857, Lot 0049)**

**Preliminary Statement of Compliance with Burden of Proof**

**I. Introduction**

Applicant, Lisa McGuire, requests a special exception, pursuant to 11-E DCMR §5201.1 (a), (b) and (f), for the existing noncompliant deck/ balcony and resulting noncompliant lot occupancy and rear yard at 2825 11<sup>th</sup> Street, N.W., Washington, D.C. 20001 (Square 2857; Lot 0049). The existing residence is located in the RF-1 Zone and has a lot occupancy of 69.7% and a rear yard of 15.5’.

**II. Standard of Review**

11-E DCMR §306.1 of the Zoning Regulations requires a rear yard setback of 20’ in the RF-1 zone. A rear yard of 15.5’ is currently provided. 11-E DCMR §304.1 limits lot occupancy in the RF-1 Zone to 60%. Lot occupancy is currently 69.7%. 11-E DCMR §5201.3(e) allows the Board to grant special exception relief for the lot occupancy up to 70%. 11-C DCMR §202.2(b) prohibits enlargements or additions that increase or extend any existing, nonconforming aspect of the structure or the creation of any new nonconformity of structure and addition combined.

- 306.1            A minimum rear yard of twenty feet (20 ft.) shall be provided in the RF-1 zones.
- 304.1            Maximum lot occupancy for flats in the RF-1 Zone is 60%.
- 5201.3(e)        The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).
- 202.2            Enlargements or additions may be made to the structure; provided that the addition or enlargement itself shall:
  - (b)            Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

Special Exception approval is required to provide less than the 20’ rear yard, for the 69.7% lot occupancy and for the deck/ balcony that increased/ extended the already nonconforming structure.

- 5201.1            The Board of Zoning Adjustment may approve as a special exception in the RF zones, relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9.

- (a) Lot occupancy;
- (b) Yards;
- (c) Courts;
- (d) Minimum lot dimensions;
- (e) Pervious surface; and
- (f) The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.

### **III. Compliance with the Standards of 11-X DCMR §901**

#### **A. The Special Exception Will Be in Harmony with the General Purpose and Intent of the Zoning Regulations and Maps.**

As stated in 11-E DCMR §300, “The purpose of the RF-1 zone is to provide for areas predominantly developed with attached row houses on small lots within which no more than two (2) dwelling units are permitted.” Pursuant to Chapter One of Subtitle X, the RF Zones are “low-, moderate- or medium-density residential areas suitable for residential life and supporting uses” that:

- “(a) Recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city;
- (b) Allow for limited compatible non-residential uses;
- (c) Allow for the matter-of-right development of existing lots of record;
- (d) Establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones;
- (e) Allow for the limited conversion of rowhouse and other structures for flats; and
- (f) Prohibit the conversion of flats.”

The existing deck/ balcony and resulting reduced rear yard and increased lot occupancy do not conflict with any of the above-stated purposes for the RF Zones. No conversion of the existing flat is proposed – the relief is sought only to bring the property into compliance. Pursuant to 11-X DCMR § 901.2(a), the special exception request to permit the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Map. 11-A DCMR § 101.1 calls for the promotion of the public health, safety, morals, convenience, order, prosperity and general welfare. The use will not change or interfere with existing light and air. Similarly, because the home will be utilized as a flat as intended, the use will not allow undue concentration of population and the overcrowding of land nor will it result in an uneven distribution of population, business and industry and use of land.

**B. The Special Exception Will Not Tend to Adversely Affect the Use of Neighboring Property in accordance with the Zoning Regulations and Maps.**

The proposed addition will not tend to adversely affect the use of neighboring property. The deck/ balcony does not negatively impact the adjoining flats or affect their access to light and air.

**IV. Compliance with 11-E DCMR § 5201.3**

11-E DCMR § 5201.3 requires, “an applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

- (a) The light and air available to neighboring properties shall not be unduly affected;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
- (c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage;
- (d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and
- (e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).

The deck/ balcony and resulting reduced rear yard will not negatively impact the light and air to neighboring properties nor shall the privacy of use and enjoyment of these properties be negatively affected. The flat will maintain the character, scale and pattern of houses along the subject street frontage. The application package includes plans and photographs that demonstrate compliance with (a) through (c).

**V. Community Outreach**

Pursuant to Subtitle Y § 300.8(1), the Applicant will be contacting the local Advisory Neighborhood Commission 1B and community groups within the next week to seek their feedback on this application.

## **VI. Testimony Summary**

The Applicant, Lisa McGuire and her architect, Kami Wilwol, will provide testimony at the hearing. An outline of the testimony is provided below:

### ***Introduction***

- A. Existing Conditions
- C. Relief Sought

### ***Standard of Review***

- A. Harmony with General Purposes and Intent of Zoning Regulations and Map
- B. No Adverse Effects on Use of Neighboring Property

### ***Conclusion***

## **VII. Parking**

There are currently two substandard spaces in the rear. We are not requesting relief for these spaces (8' x 16') as the Zoning Administrator has indicated that he will consider them non-conforming or grandfathered and will allow them to continue without BZA relief. I have attached the email from Matt LeGrant confirming this.

## **VII. Conclusion**

Based on the foregoing, the Applicant meets the test for a special exception to allow the deck/ balcony to remain and the special exception request should be granted.

**From:** LeGrant, Matt (DCRA)  
**To:** [Tracy Themak](#)  
**Cc:** [Tondro, Maximilian \(DCRA\)](#)  
**Subject:** RE: Zoning Relief for 2825 11th Street, NW  
**Date:** Friday, March 23, 2018 3:47:54 PM  
**Attachments:** [image007.png](#)  
[image013.png](#)

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Tracy-

I am in agreement with the three listed areas of BZA relief you have noted.

In terms of the two substandard sized parking spaces, my review of aerial photographs show the rear portion of the lot adjacent to the alley has been used for parking two vehicles. Therefore, I will consider the substandard dimensions of those two spaces as non-conforming or 'grandfathered' and are allowed to continue to be used without the need for BZA relief. You could also show one conforming 9' x 18' space as well.

**Matthew Le Grant | Zoning Administrator, Office of the Zoning Administrator**  
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Matthew.legrant@dc.gov | 1100 4th St SW, DC 20024  
main: 202.442.4576 | desk: 202.442.4652  
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**From:** Tracy Themak [mailto:tracythemak@donohuestearns.com]  
**Sent:** Thursday, March 22, 2018 1:28 PM  
**To:** LeGrant, Matt (DCRA)  
**Cc:** Tondro, Maximilian (DCRA)  
**Subject:** RE: Zoning Relief for 2825 11th Street, NW

Matt,

I wanted to send you the draft Form 135 to see if we were seeking the correct relief for this one. We had met on February 21<sup>st</sup> and discussed it, but we now have the attached drawings. My understanding is that we will need the following relief:

Special Exception relief pursuant to 11-E DCMR §5201 for:

- the lot occupancy (we exceed the 60% maximum in 11-E DCMR §304.1) (up to a maximum of 70% - we are at 69.7%)
- rear yard setback (we do not meet the 20' required in 11-E DCMR §306.1)
- addition to a nonconforming structure (prohibited by 11-C DCMR §202.2(b))

Variance relief from the parking space dimensions as they do not meet the minimum measurements in 11-C DCMR §712.5 will also be necessary if we keep two spaces. Instead of asking for the variance relief for the parking dimensions, since only 1 space per 2 dwellings is required – could we simply change the 2 8' x 16' spaces into one conforming 9' x 18' space?

If this all sounds correct, then we will assemble the formal submission and get this in.

Thank you,

Tracy



**Tracy Themak, Esq.**  
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**From:** LeGrant, Matt (DCRA) <[matthew.legrant@dc.gov](mailto:matthew.legrant@dc.gov)>  
**Sent:** Tuesday, February 20, 2018 11:36 AM  
**To:** Tracy Themak <[tracythemak@donohuestearns.com](mailto:tracythemak@donohuestearns.com)>  
**Cc:** Tondro, Maximilian (DCRA) <[maximilian.tondro@dc.gov](mailto:maximilian.tondro@dc.gov)>  
**Subject:** RE: Zoning Relief for 2825 11th Street, NW

Tracy- Yes see you then!

**Matthew Le Grant** | **Zoning Administrator**, *Office of the Zoning Administrator*  
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**From:** Tracy Themak [<mailto:tracythemak@donohuestearns.com>]  
**Sent:** Tuesday, February 20, 2018 10:50 AM  
**To:** LeGrant, Matt (DCRA)  
**Cc:** Tondro, Maximilian (DCRA)  
**Subject:** RE: Zoning Relief for 2825 11th Street, NW

Matt,  
I am confirming that we are on for a meeting tomorrow at 2pm.  
Thank you,  
Tracy



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**From:** Tracy Themak  
**Sent:** Wednesday, February 14, 2018 10:00 AM  
**To:** 'LeGrant, Matt (DCRA)' <[matthew.legrant@dc.gov](mailto:matthew.legrant@dc.gov)>  
**Cc:** Tondro, Maximilian (DCRA) <[maximilian.tondro@dc.gov](mailto:maximilian.tondro@dc.gov)>  
**Subject:** RE: Zoning Relief for 2825 11th Street, NW

Matt,

That would work well, thank you. I will see you at 2 p.m. on the 21<sup>st</sup>.



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**From:** LeGrant, Matt (DCRA) [<mailto:matthew.legrant@dc.gov>]  
**Sent:** Tuesday, February 13, 2018 3:49 PM  
**To:** Tracy Themak <[tracythemak@donohuestearns.com](mailto:tracythemak@donohuestearns.com)>  
**Cc:** Tondro, Maximilian (DCRA) <[maximilian.tondro@dc.gov](mailto:maximilian.tondro@dc.gov)>  
**Subject:** FW: Zoning Relief for 2825 11th Street, NW

Tracey Themak-

My counsel, Max Tondro, and I could meet you to discuss on February 21<sup>st</sup> at 2 pm in my office. Please confirm if that date and time works for your schedule.

**Matthew Le Grant | Zoning Administrator, Office of the Zoning Administrator**

Department of Consumer and Regulatory Affairs

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**From:** Tracy Themak [<mailto:tracythemak@donohuestearns.com>]

**Sent:** Friday, February 09, 2018 10:39 AM

**To:** LeGrant, Matt (DCRA)

**Subject:** Zoning Relief for 2825 11th Street, NW

Matt,

We are representing Lisa McGuire who owns one of the units at 2825 11<sup>th</sup> Street, N.W. You submitted an expert report in a Superior Court case (D.C. v. Hofgard – 2015 CA 03354 B) regarding this property and the outstanding zoning violations in November of 2015 (attached). Yesterday, I met with Karen Thomas and she recommended that I confirm what relief we needed with you since the report predated the amended Zoning Regulations.

Your report summarized the problems with the property. The property has rear decks or balconies and parking spaces that are in violation of the Zoning Regulations. The property is a non-conforming property and the decks present lot occupancy and setback compliance issues. In addition, the property has parking spaces that measure 8'x16'.

We are currently having drawings prepared so that we know the exact numbers that we are working with, but I was hoping you could confirm that we are seeking the correct relief (described below).

We will need Special Exception pursuant to 11-E DCMR §5201 relief for:

- the lot occupancy (we exceed the 60% maximum in 11-E DCMR §304.1) (up to a maximum of 70%)
- rear yard setback (we do not meet the 20' required in 11-E DCMR §306.1)
- addition to a nonconforming structure (prohibited by 11-C DCMR §202.2(b))

We will also need Variance relief from the parking space dimensions as they do not meet the minimum measurements in 11-C DCMR §712.5.

Please let me know if this sounds correct and we will begin preparing the applications. If a meeting is needed to review, I can come see you in person.

Thank you,

Tracy





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